

Ayres, Donald

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**From:** Gonzalez, Maria  
**Sent:** Wednesday, April 03, 2013 4:18 PM  
**To:** Guevara, David  
**Cc:** Lam, Shelly; Jansen, Sally  
**Subject:** RE: Kokomo Dixon Road

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

If they are insisting on it, I will request the cost documentation. However, we will incur costs preparing the cost documentation that we will eventually pass on to the City. We normally only prepare such packages for trial, as it is expensive. That's why our orders include language specifying that the oversight cost billings will be based on itemized cost summaries, which we will insist on. As the cases indicate, the courts generally don't require that much information to support our costs. We may also need to redact contractor CBI or execute confidentiality agreements. I will request a full cost documentation package for costs through March 31, 2013. That will not include the costs incurred preparing the package, however.

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**From:** Guevara, David [<mailto:DGuevara@taftlaw.com>]  
**Sent:** Wednesday, April 03, 2013 3:52 PM  
**To:** Gonzalez, Maria  
**Cc:** Lam, Shelly; Jansen, Sally  
**Subject:** RE: Kokomo Dixon Road

Maria,

The insurer's response to the cases you cited to me is immediately below. Pursuant to my e-mail earlier today, the insurer is now willing to issue payment for all costs incurred by the US EPA up through March 31, 2013. **This is a great result and one that I have worked hard to obtain.** Thus, I need an accounting of the US EPA's costs up through this latter date. More importantly, I need some cooperation from the US EPA to make the accountants at the insurance company comfortable that the costs claimed by the US EPA are genuinely worthy of payment. I have consulted with many of the attorneys in our firm, some of whom have been practicing and working with the US EPA for 30+ years, and no one seems to have had this much trouble just trying to get backup documentation for costs. From the insurer's comment below, it appears that it does not generally have this much difficulty either. This is particularly frustrating because the insurer is ready to write the check.

Please advise.

Thank you.

**From:** Macke, Sybille C [<mailto:SMACKE@travelers.com>]  
**Sent:** Friday, March 15, 2013 11:25 AM  
**To:** Guevara, David  
**Cc:** Macke, Sybille C  
**Subject:** RE: Kokomo

David – just following up on this. I don't think the case law the EPA provided is very helpful since those cases mostly discuss the "types" of costs that may be covered rather than what constitutes appropriate documentation of costs (e.g., a brief description of the work performed for the hours billed). Further those cases involve claims by the EPA against the tortfeasor, and not claims for recovery by or on behalf of the tortfeasor under an insurance policy. I don't believe we generally have these billing issues with the EPA.

Thanks  
Sybille

## Taft /

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**From:** Gonzalez, Maria [<mailto:gonzalez.maria@epa.gov>]  
**Sent:** Wednesday, April 03, 2013 3:10 PM  
**To:** Guevara, David  
**Cc:** Lam, Shelly; Jansen, Sally  
**Subject:** RE: Kokomo Dixon Road

I have only been in contact with the insurer with respect to our information request and have not discussed the AOC with them. I have not heard back on the level of cost documentation that they want. Your message below indicates that you were waiting to hear from them. We will keep incurring costs at the site and will incur additional costs putting together cost documentation. I'm not sure it make sense to keep updating the cost figure. Should I proceed to ask our finance folks for a full cost documentation on the costs through 12/31/13? I was waiting to hear back from you on whether they still wanted that after reviewing the citations.

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**From:** Guevara, David [<mailto:DGuevara@taftlaw.com>]  
**Sent:** Wednesday, March 13, 2013 11:32 AM  
**To:** Gonzalez, Maria  
**Subject:** RE: Kokomo Dixon Road

Maria,

Last week I sent the insurer the cases you cited. I just e-mailed the insurer now requesting a response to my question concerning the level of cost documentation required. I will update you upon receipt of a response.

Thank you.

## Taft /

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**From:** Gonzalez, Maria [<mailto:gonzalez.maria@epa.gov>]  
**Sent:** Tuesday, March 12, 2013 6:45 PM  
**To:** Guevara, David  
**Cc:** Jansen, Sally; Lam, Shelly  
**Subject:** RE: Kokomo Dixon Road

I plan to revise the AOC to include your change to paragraph 9.p, as well as fix the formatting. I hope to send you a revision soon. It will be subject to Agency review and comment.

p.s. Have you heard back from the City's insurer on the level of cost documentation?

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**From:** Guevara, David [<mailto:DGuevara@taftlaw.com>]

**Sent:** Tuesday, March 05, 2013 1:05 PM

**To:** Gonzalez, Maria

**Cc:** Jansen, Sally; Lam, Shelly

**Subject:** RE: Kokomo Dixon Road

Maria,

I am following up on the e-mail below. Have you had an opportunity to review?

Please advise.

Thank you.

## Taft /

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**From:** Guevara, David

**Sent:** Monday, February 25, 2013 9:59 AM

**To:** 'Gonzalez.Maria@epamail.epa.gov'

**Cc:** [Jansen.Sally@epamail.epa.gov](mailto:Jansen.Sally@epamail.epa.gov); [Lam.Shelly@epamail.epa.gov](mailto:Lam.Shelly@epamail.epa.gov)

**Subject:** RE: Kokomo Dixon Road

Maria,

I am appreciative of the revisions to the proposed agreement. However, § IV(9)(p) is not accurate.

### Section IV(9)(p)

Section IV(9)(p) states that "[d]rums and wastes could be located beyond the property boundaries." However, according to the February 17, 2012 Site Assessment Report and the August 13, 2012 Action Memorandum, both drums and waste are, in fact, located beyond the property boundaries.

First, the Site Assessment documented “[s]everal partially buried drums . . . on the banks of the swale [that] appeared to be in deteriorated condition.”

Second, the Site Assessment stated that “[d]umping was observed out of the boundary of the city property all the way to the Wildcat Creek on the north side and on the Sutton Towing property to the north.” In fact, the Site Assessment documented “[a]uto parts, gasoline tanks, tires and metal slags . . . between the property fence and the rail road and on the Sutton Towing property.”

Third, surface soil sample KD-SS-01 is offsite. The Site Assessment documented that KD-SS-01 “exceeded EPA’s industrial RSL for lead of 800 mg/Kg.” Similarly, KD-SS-01 “exceeded the TCLP criteria of 5 mg/L for lead.”

Fourth, subsurface soil sample KD-SB-3 is offsite. The Site Assessment documented that KD-SB-3, at 10 to 12 feet, “exceeded EPA RSLs for arsenic in industrial soil of 1.6 mg/Kg.”

Fifth, the Action Memorandum noted that the “OSC observed that one of the drums was close to a child’s swing set on a neighboring residential property.”

Accordingly, can § IV(9)(p) be revised as follows:

“Drums and waste are located beyond the property boundaries. Lead in the surface soil beyond the property boundaries exceeds EPA’s industrial RSL and TCLP criteria. Arsenic in the subsurface soil beyond the property boundaries exceeds EPA RSLs for arsenic in industrial soil.”

Please advise.

Thank you.

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**From:** [Gonzalez.Maria@epamail.epa.gov](mailto:Gonzalez.Maria@epamail.epa.gov) [<mailto:Gonzalez.Maria@epamail.epa.gov>]

**Sent:** Friday, February 15, 2013 7:55 PM

**To:** Guevara, David

**Cc:** [Jansen.Sally@epamail.epa.gov](mailto:Jansen.Sally@epamail.epa.gov); [Lam.Shelly@epamail.epa.gov](mailto:Lam.Shelly@epamail.epa.gov)

**Subject:** RE: Kokomo Dixon Road

**CONFIDENTIAL: FOR DISCUSSION PURPOSES ONLY**

I am attaching a markup of the draft AOC, to reflect the changes we have been discussing, including the items discussed at our meeting, the language about potential off-site threats, the language in the activity description about notice of sampling, and the updated costs.

*(See attached file: AOCmarkupsent021513.pdf)*

The language and terms of the attached draft are subject to Agency review.

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